

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0476
Sales Tax
Responsible Officer
For the Tax Period July, 2001-December, 2001

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ISSUES

1. Sales Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b).

The taxpayer protests the assessment of responsible officer liability for unpaid sales taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes, interest and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit sales taxes during the tax period July, 2001 through December, 2001. The taxpayer protested the assessment of tax and penalty. This Letter of Findings is based upon the documentation in the file.

1. Sales Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The taxpayer provided significant documentation evidencing that he left his position with the corporation in 1997. Since the taxpayer was not an employee, officer, or member of the corporation from July, 2001 through December, 2001, the taxpayer cannot be held personally responsible for trust taxes that the corporation did not remit to the state.

Finding

The taxpayer's protest is sustained.

KMA/JMM/MR--042602